

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	IC Nos. 03-S85462
Sprint Communications Company	)	03-S85737
	)	04-S86777
Complaints Regarding	)	04-S86807
Unauthorized Change of	)	04-S86826
Subscriber's Telecommunications Carrier	)	04-S86833
	)	04-S86835
	)	04-S86846
	)	04-S86869
		04-S86898
		04-S86903
		04-S86928
		04-S86945
		04-S87047
		04-S87057
		04-S87068
		04-S87079
		04-S87082
		04-S87106
		04-S87114
		04-S87131
		04-S87143
		04-S87149
		04-S87171
		04-S87183
		04-S87203
		04-S87219
		04-S87241

**ORDER**

**Adopted: October 27, 2004, 2004**

**Released: October 29, 2004**

By the Deputy Chief, Consumer Policy Division, Consumer & Governmental Affairs Bureau:

1. In this Order, we consider the complaints<sup>1</sup> alleging that Sprint Communications Company (Sprint) changed Complainants' telecommunications service providers without obtaining authorization and verification from Complainants in violation of the Commission's rules.<sup>2</sup> We conclude that Sprint's actions did result in an unauthorized change in Complainants'

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<sup>1</sup> See Appendix A.

<sup>2</sup> See 47 C.F.R. §§ 64.1100 – 64.1190.

telecommunications service providers and we grant Complainants' complaints.

2. In December 1998, the Commission released the *Section 258 Order* in which it adopted rules to implement Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act).<sup>3</sup> Section 258 prohibits the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.<sup>4</sup> In the *Section 258 Order*, the Commission adopted aggressive new rules designed to take the profit out of slamming, broadened the scope of the slamming rules to encompass all carriers, and modified its existing requirements for the authorization and verification of preferred carrier changes. The rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.<sup>5</sup> Pursuant to Section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures.<sup>6</sup> Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130 authorization; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.<sup>7</sup>

3. The Commission also has adopted liability rules. These rules require the carrier to absolve the subscriber where the subscriber has not paid his or her bill. In that context, if the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30

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<sup>3</sup> 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (*Section 258 Order*), *stayed in part*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, 15 FCC Rcd 8158 (2000); *stay lifted*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996 (2000), Errata, DA No. 00-2163 (rel. Sept. 25, 2000), Erratum, DA No. 00-2192 (rel. Oct. 4, 2000), Order, FCC 01-67 (rel. Feb. 22, 2001); Third Order on Reconsideration and Second Further Notice Proposed Rule Making, 18 FCC Rcd 5099 (2003); Order, FCC 03-116, (rel. May 23, 2003). Prior to the adoption of Section 258, the Commission had taken various steps to address the slamming problem. *See, e.g., Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), *stayed in part*, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), *reconsideration denied*, 8 FCC Rcd 3215 (1993); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911, 101 F.C.C.2d 935, *reconsideration denied*, 102 F.C.C.2d 503 (1985).

<sup>4</sup> 47 U.S.C. § 258(a).

<sup>5</sup> *See* 47 C.F.R. § 64.1120(b).

<sup>6</sup> 47 U.S.C. § 258(a).

<sup>7</sup> *See* 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

days after the unauthorized change.<sup>8</sup> Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150% of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.<sup>9</sup> Carriers should note that our actions in this Order do not preclude the Commission from taking action, if warranted, pursuant to section 503 of the Act.<sup>10</sup>

4. We received Complainants' complaints alleging that Complainants' telecommunications services providers had been changed from their authorized carriers to Sprint without Complainants' authorization.<sup>11</sup> Pursuant to Sections 1.719 and 64.1150 of our rules,<sup>12</sup> we notified Sprint of the complaints and Sprint responded.<sup>13</sup> Sprint states that authorization was received and confirmed through signed letters of agency (LOAs). Sprint's LOAs, however, were not dated by the subscriber as required by our rules.<sup>14</sup> Sprint has failed to produce clear and convincing evidence that Complainants authorized a carrier change.<sup>15</sup> Therefore, we find that Sprint's actions resulted in an unauthorized change in Complainants' telecommunications service providers and we discuss Sprint's liability below.<sup>16</sup>

5. Sprint must remove all charges incurred for service provided to Complainants for the first thirty days after the alleged unauthorized change in accordance with the Commission's liability rules.<sup>17</sup> We have determined that Complainants are entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and that neither the authorized carriers nor Sprint may pursue any collection against Complainants for those

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<sup>8</sup> See 47 C.F.R. §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.*

<sup>9</sup> See 47 C.F.R. §§ 64.1140, 64.1170.

<sup>10</sup> See 47 U.S.C. § 503.

<sup>11</sup> See Appendix A.

<sup>12</sup> 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

<sup>13</sup> See Appendix A.

<sup>14</sup> See 47 C.F.R. § 64.1130(b).

<sup>15</sup> See 47 C.F.R. § 64.1150(d).

<sup>16</sup> If a Complainant is unsatisfied with the resolution of this complaint, such Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules, 47 C.F.R. § 1.721. Such filing will be deemed to relate back to the filing date of such Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to such Complainant. See 47 C.F.R. § 1.719.

<sup>17</sup> See 47 C.F.R. § 64.1160(b).

charges.<sup>18</sup> Any charges imposed by Sprint on the subscriber for service provided after this 30-day period shall be paid by the subscriber to their respective authorized carrier at the rates each subscriber was paying to its respective authorized carrier at the time of the unauthorized change.<sup>19</sup>

6. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.719, the complaints filed by Complainants<sup>20</sup> against Sprint ARE GRANTED.

7. IT IS FURTHER ORDERED that, pursuant to Section 64.1170(d) of the Commission's rules, 47 C.F.R. § 64.1170(d), Complainants are entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred to the relevant Complainant and neither the authorized carrier nor Sprint may pursue any collection against Complainants for those charges.

8. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Nancy A. Stevenson, Deputy Chief  
Consumer Policy Division  
Consumer & Governmental Affairs Bureau

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<sup>18</sup> See 47 C.F.R. § 64.1160(d).

<sup>19</sup> See 47 C.F.R. §§ 64.1140, 64.1160.

<sup>20</sup> See Appendix A.

## APPENDIX A

<u>INFORMAL COMPLAINT NUMBER</u>	<u>DATE OF COMPLAINT</u>	<u>DATE OF CARRIER RESPONSE</u>
03-S85462	November 4, 2003	January 23, 2004
03-S85737	December 8, 2003	March 8, 2004
04-S86777	March 26, 2004	June 4, 2004
04-S86807	April 28, 2004	June 4, 2004
04-S86826	April 19, 2004	June 18, 2004
04-S86833	April 29, 2004	June 18, 2004
04-S86835	March 15, 2004	June 18, 2004
04-S86846	April 1, 2004	June 18, 2004
04-S86869	March 11, 2004	May 21, 2004
04-S86898	May 3, 2004	July 20, 2004
04-S86903	May 1, 2004	June 11, 2004
04-S86928	April 14, 2004	July 12, 2004
04-S86945	April 14, 2004	June 4, 2004
04-S87047	April 6, 2004	June 4, 2004
04-S87057	December 16, 2003	June 18, 2004
04-S87068	April 23, 2004	June 10, 2004
04-S87079	March 29, 2004	August 12, 2004
04-S87082	April 26, 2004	July 20, 2004
04-S87106	May 10, 2004	June 25, 2004
04-S87114	May 3, 2004	June 29, 2004
04-S87131	April 7, 2004	July 13, 2004
04-S87143	May 17, 2004	July 2, 2004
04-S87149	May 18, 2004	July 21, 2004
04-S87171	April 1, 2004	June 25, 2004
04-S87183	May 10, 2004	August 30, 2004
04-S87203	March 23, 2004	June 25, 2004

04-S87219	May 18, 2004	July 16, 2004
04-S87241	May 26, 2004	June 25, 2004